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Analysis

Am. Sub. H.B. 84 - Rep. Schmidt (As Enacted)

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ORSC Recommendation

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Am. Sub. H.B. 84

Am. Sub. H.B. 84 generally precludes elected officials who retire from the Public Employees Retirement System (PERS) and are reelected or appointed to the **same** office for the remainder of their term or the term immediately following from receiving their retirement allowance while drawing a salary for that office.

Under the bill, such elected officials would forfeit the pension portion of their retirement allowance (the amount funded by employer contributions) for the period of employment; the annuity portion of their retirement allowance (the amount funded by member contributions) would be suspended. Upon employment, the elected official would become a “new” member of PERS with all rights and obligations of membership, except survivor coverage and the 33%/67% employer match otherwise payable upon a refund of the member’s accumulated contributions. The elected official would contribute to PERS and accrue service credit. On termination of employment, the elected official would receive either a refund of the member’s accumulated contributions, with interest, for the period of employment or a supplemental retirement allowance based solely on the elected official’s contributions and service credit for the period of employment. (The elected official would **not** be permitted to combine the service credit for all employment covered under PERS and have the original retirement allowance recalculated based upon the combined service credit.) In addition, the elected official would receive the suspended annuity portion of the original retirement allowance in a lump sum payment, and the original retirement allowance would resume on the first day of the month following termination of employment.

As amended by the Senate Ways and Means Committee, the bill provides a limited exception for elected officials that provide at least 90-days notice to the electorate or notice to the appointing authority of their retirement or intent to retire prior to end of their current term. Specifically, elected officials must file a written declaration of intent to retire before the end of their current term at least 90 days prior to the election with the appropriate county board of elections; must have been retired for at least 90 days prior to the election in the case of elected officials who are retired; or must notify the appointing authority that the elected official is retired or intends to retire before the end of their current term. Such officials would be permitted to continue receiving their retirement allowance while drawing a salary provided they have been retired for two-months prior to reemployment in the same office. The purpose of the notice requirements is to allow the electorate or appointing authority to factor an elected official’s retirement or impending retirement in their decision to reelect or appoint the official to the same office from he or she retired.

Current law provides that PERS retirees, including all elected officials, who are reemployed in any position covered by PERS or another state retirement system, may continue receiving their retirement allowance while drawing a salary **provided** they have been retired for **two** months prior to reemployment.¹ They forfeit their retirement allowance for any month in which they are reemployed prior to the expiration of the two-month period. Upon employment, they contribute to the applicable retirement system toward a “money purchase benefit,” **except** that any contributions made prior to the expiration of the two-month period are **not** used in the calculation of the benefit

¹The current laws of the other state retirement systems governing reemployed retirees are identical in this regard.

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but are refunded to the reemployed retiree.² The money purchase benefit consists of a single life annuity having a reserve equal to the retiree's accumulated contributions for the period of employment, with interest, plus an equal amount from employer contributions. The benefit is payable as either a lump sum discounted to present value or a monthly annuity provided the amount equals at least \$25 per month. The benefit becomes effective upon the first day of the month following the later of:

- the last day for which compensation was paid;
- age 65 (age 60 in the Ohio Police and Fire Pension Fund);
- 12 months since the effective date of the last money purchase benefit.

The bill would apply only to elected officials who are retired from PERS and who are reelected or appointed to the **same** office from which they retired, *with the exception of those officials that provide the required notice of their retirement or intent to retire as described above*; elected officials who are elected or appointed to a **different** office from which they retired would continue to receive their retirement allowance while drawing a salary for the office subject to the two-month forfeiture provision described above and contribute towards a money purchase benefit.³

The bill would repeal the election provided under S.B. 144 (eff. 9/14/00), as amended by H.B. 535 (eff. 4/1/01), which generally permits reelected officials to choose to make contributions toward a money purchase benefit and thereby begin collecting their original retirement allowance while drawing a salary for their office. The bill would also declare an emergency.

In short, the bill would reinstate the PERS reemployment restrictions that existed prior to the changes made in S.B. 144 (eff. 9/14/00) relative to the reemployment rights of this group of elected officials.

The bill was amended in the House Retirement & Aging Committee to correct a technical oversight relative to tax treatment under the alternative retirement plan for higher education employees. The amendment would provide the same tax exemptions under the ARP for higher education employees as currently exist under the five state retirement systems with respect to the payment of benefits therefrom. Employee contributions made to either the state retirement systems or the ARP are subject to municipal, county or other local taxes.

Background

Ohio has a long and successful record of opposing mandatory Social Security coverage for its public employees who are covered under one of the state retirement systems - some of which

²Though they contribute to the retirement system, reemployed retirees are not considered members of the retirement system and, therefore, accrue no additional benefits during the period of reemployment, such as age and service, disability, survivor, health care or cost-of-living benefits. Accordingly, no additional actuarial liabilities are created to the retirement systems.

³For example, a retired municipal court judge who is elected or appointed as a common pleas court judge would be exempt from the effect of the bill.

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predate the Social Security System itself. Thus, in response to a federal mandate that would have otherwise required certain reemployed retirees to contribute to the Social Security System on or after July 1, 1991, H.B. 382 (eff. 6/30/91) was enacted to amend the prior reemployment restrictions applicable to retirees that prohibited a retiree who was reemployed in a position covered by another state retirement system or, under certain conditions, by the same retirement system that granted the allowance, from making contributions to the retirement system. Under the federal law, public employees not contributing to a state or local retirement system are generally required to contribute to Social Security, with limited exceptions.

Accordingly, the prior reemployment restrictions were amended in 1991 to require contributions from all reemployed retirees toward a money purchase benefit equal to the member's accumulated contributions during reemployment, with interest, along with a matching amount from employer contributions. Reemployed retirees continued to receive their original retirement allowance during the period of reemployment, provided they waited at least two months after retirement before returning to employment (18 months after retirement in STRS before returning to full-time teaching). The money purchase benefit was payable as a lump sum payment or monthly annuity upon the later of the first day of the month following termination of employment, attainment of age 65 (age 60 in OP&F) or 12 months after the effective date of their last money purchase benefit.

Unlike any of the other state retirement systems, PERS retirees who were reemployed in a position covered by PERS were given the option to forego their original retirement allowance during the period of reemployment and become members of PERS, with all the rights and obligations of membership, except survivor coverage. They were eligible for a supplemental formula benefit based upon their years of service and final average salary earned during the period of reemployment or a refund of their accumulated contributions during the period of reemployment.

Since the enactment of H.B. 382 (eff. 6/30/91), the reemployment statutes in PERS have been amended in an ad hoc manner. H.B. 151 (eff. 2/9/94) increased the waiting period from two to six months for PERS retirees who were reemployed in positions covered by PERS; the two-month waiting period, however, still applied to PERS retirees who were reemployed in positions covered by another state retirement system. Also, H.B. 151 prohibited an elected official from retiring from PERS during the period beginning 31 days prior to the election date through 31 days after the commencement of the new term of office.⁴ S.B. 82 (eff. 12/6/96) further changed the restrictions applicable to elected officials who retired from PERS and were elected or appointed to the same office by requiring them to forego their retirement allowance during the period of reemployment and become once again members of PERS under the special option described above.

As shown above, prior to S.B. 144 (eff. 9/14/00) various reemployment restrictions applied to different groups of retired public employees. For example, certain retired public employees were required to wait a minimum two months before returning to any public employment covered by the state retirement systems. Others were required to wait a minimum six or eighteen months, depending on the retirement system from which they retired as well as the type of public employment in which they were reemployed. Yet others were prohibited altogether from collecting a pension while drawing a salary (e.g., retired elected officials who were reelected or appointed to the same office). *This raised the public policy issue of whether the reemployment restrictions*

⁴This statutory restriction created a loophole for elected officials running unopposed by allowing them to retire more than 31 days prior to the election date without violating the statute.

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among the Ohio retirement systems should be made more uniform, where practicable.

Thus, S.B. 144 (eff. 9/14/00) modified the reemployment statutes of the state retirement systems. *The purpose of these modifications was to provide a single, uniform set of rules applicable to all retired public employees, including elected officials, who were reemployed in a position covered by any of the five state retirement systems in Ohio. Another purpose was to alleviate shortages in experienced personnel in some critical areas (teachers, township trustees). The prior reemployment statutes often served as a disincentive or obstacle for retired public employees to fill such vacancies. In this regard, S.B. 144 made three major changes to the reemployment statutes.*

First, S.B. 144 amended the reemployment provisions of PERS and STRS with respect to the minimum waiting period. Under prior law, PERS retirees were required to wait a minimum six months prior to becoming employed in any PERS-covered position; STRS retirees were required to wait a minimum 18 months prior to becoming employed as a full-time teacher. Therefore, the bill reduced the minimum waiting period in PERS and STRS to two months, which is consistent with the reemployment statutes of the other state retirement systems.

Second, S.B. 144 permitted members of PERS, STRS or SERS who have concurrent service covered under PERS, STRS or SERS to retire from the position having the higher salary and continue contributing on the other position(s) toward a money purchase benefit. Under prior law, such members were prohibited from retiring prior to termination of all employment covered by PERS, STRS or SERS.⁵ For example, a teacher with 30 years of service who also served as a part-time township trustee or city council member was forced to forego retirement as a teacher in order to continue serving as a part-time township trustee or city council member or, in the alternative, resign as a township trustee or city council member in order to retire as a teacher. Under S.B. 144, the determination of eligibility for retirement and the amount of the retirement allowance on the higher-salaried position shall be based on the member's total service credit and contributions in PERS, STRS and/or SERS **prior to** the effective date of retirement, except that no more than one year of service credit shall be granted for any twelve-month period. The retiree shall continue to contribute to PERS, STRS or SERS on the position(s) having the lower salary. Upon termination of employment in the lower-paid position, the retiree shall be eligible for a money purchase benefit equal to the member's accumulated contributions **on or after** the effective date of retirement, with interest, along with a matching amount from employer contributions.

Third, S.B. 144 amended the PERS reemployment statute to eliminate the previous option provided to PERS retirees who were employed in PERS-covered positions to forego their retirement allowance during the period of reemployment, reestablish membership in PERS with all the rights and obligations thereof, except survivor coverage, and accrue additional service credit toward a supplemental retirement allowance based on such service. None of the other state retirement systems provided for this option. S.B. 144 grandfathered in all PERS retirees who chose this option prior to the effective date of the bill in recognition of the prospective application of new laws in Ohio. S.B. 144 also permitted those elected officials who were required by statute to choose the option to revoke it. Upon such revocation, any forfeiture or suspension of the retirement allowance shall cease upon the later of the effective date of this provision of the bill or the earlier of

⁵Current law permits members of OP&F or HPRS who have concurrent service covered under PERS, STRS or SERS to retire independently from OP&F or HPRS and to continue contributing in PERS, STRS or SERS toward a money purchase benefit.

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termination of employment or the date that is two months after the commencement of the retirement allowance. The elected official shall be deemed to have elected the money purchase benefit described above.

Staff Comments

The public policy regarding reemployed retirants has been in a constant state of flux in Ohio. Traditionally, retirement has been viewed as a one-time, take-it or leave-it act that signifies the end of an individual's working life. However, retirement is evolving from an abrupt act into a gradual process of easing out of a full-time work schedule for many individuals. According to a survey conducted by Watson Wyatt, phased retirement arrangements, such as deferred retirement option plans (DROP), are becoming increasingly popular in both the private and public sectors on account of the following factors: (1) historically low levels of unemployment; (2) longer life spans and improved health at older ages; (3) employers' need to retain skilled and valued workers; and (4) individuals' need to supplement retirement income.⁶ Recently, Congress eliminated the Social Security earnings test for workers age 65 and older which had penalized older workers by reducing their Social Security benefits. Other Congressional proposals would allow for in-service distributions to pension plan participants who have reached age 59 1/2 or completed 30 years of service.

From an actuarial funding perspective, the state retirement systems are designed so that the employee and employer contributions made to the system over the working life of the member, together with investment earnings thereon, are sufficient to fund in full the retirement allowance payable to the member upon retirement. Therefore, the fact that the retired member may be employed subsequent to retirement by a public employer rather than a private employer has no actuarial cost impact upon the retirement system's funding of the retirement allowance earned by the member.

The current reemployment statutes among the state retirement systems, as modified by S.B. 144, are uniform so that all retired public employees are treated equally in terms of reemployment covered by any state retirement system. *Currently, all retired public employees may collect a retirement allowance while drawing a public salary, provided reemployment occurs two months after retirement.* Upon reemployment, all retired public employees are required to contribute toward a money purchase benefit having a reserve equal to the member's accumulated contributions, with interest, plus a matching amount from employer contributions; *they are entitled to **no** other benefits provided by the retirement systems on account of such reemployment. Accordingly, the current statutes are intended to avoid the creation of any unfunded liabilities to the retirement systems due to post-retirement employment.*

One purpose of the changes made in S.B. 144 was to provide for a uniform public policy regarding

⁶Generally, participation in DROP plans is limited to members who are eligible for service retirement. The member continues to be employed for some defined period, such as two or three years, during which period the member's monthly service retirement benefit is credited to the member's DROP account, along with annual compound interest at some specified rate. Upon termination of employment, the member receives a lump sum distribution of the member's DROP account or some alternative distribution thereof, and begins receiving a monthly service retirement benefit based on the member's final average salary and service credit calculated at the time the member elects participation in the DROP plan.

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post-retirement employment among Ohio's retired public employees, where practicable. Another purpose was to alleviate shortages in experienced personnel in certain critical areas of government. H.B. 84 would carve out a very limited exception for a group of public employees; namely, elected officials who retire from PERS and are reelected or appointed to the same office for the remainder of their term or the term immediately following. Such elected officials would be precluded from collecting their retirement allowance while drawing a salary for their elected office with the exception of those officials who comply with the notice requirements described above. Moreover, they would once again become members of PERS with all rights and obligations thereof, except survivor coverage and any employer match upon a refund of contributions. They would accrue service credit toward a supplemental retirement allowance which, after termination of employment, would be calculated on their final average salary and years of service earned during the period of reemployment.

It should be noted that the PERS governing statutes have historically provided different treatment at times for elected officials than other state and local government employees covered under PERS on account of the varying nature of such employment. For example, elected officials have always been provided optional membership in PERS as opposed to compulsory membership for all other state and local government employees.⁷ Also, elected officials and certain appointed public officials have been permitted to purchase an additional 35% of their elective or appointive service.⁸ Therefore, restoring the prior reemployment restrictions that existed prior to S.B. 144 to this limited group of elected officials is **not** without precedence.

As indicated above, PERS was the only retirement system prior to the changes made in S.B. 144 that permitted members that were reemployed in PERS-covered positions to elect to forego their retirement allowance, reestablish membership in PERS and accrue additional service credit toward a supplemental retirement allowance. In the case of elected officials who were reelected or appointed to the same office, they had no other choice. The underlying rationale for eliminating this provision in PERS was not only to create uniformity among the retirement systems but also to avoid the potential creation of additional liabilities to PERS. For example, members who initially retire from PERS with less than 10 years of service credit and are subsequently employed in a PERS-covered position would likely choose to forego their allowance, reestablish membership in PERS and accrue additional service credit in order to satisfy the present ten-year eligibility requirement for post-retirement health care benefits. The underlying rationale for the money purchase benefit established

⁷Elected officials are required to contribute to Social Security on or after July 1, 1991 if they elect **not** to become contributing member of PERS due a change in federal law. However, once PERS membership is chosen, elected officials may **not** subsequently elect Social Security in lieu of PERS coverage unless they cease to be a public employee and apply for a refund of their accumulated contributions. Also, elected officials who are retired from PERS may **not** subsequently elect Social Security, but are subject to PERS law relative to post-retirement employment.

⁸Elected officials who first establish membership in PERS on or after January 1, 2001 are subject to the following limitations due to a change in federal tax law: (1) the purchase of 35% additional elective service is limited to those elected officials who have at least five years of service in PERS; and (2) the purchase of 35% additional elective service is limited to a maximum of five years (H.B 416 -eff. 10/13/00).

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in 1991 was to avoid the creation of any additional liabilities to the retirement systems on account of post-retirement employment. Though reemployed retirees are permitted to collect their pension while drawing a salary under the money purchase benefit structure established under H.B. 382 (eff. 6/30/91), they are not considered members of the retirement system and are **not** entitled to any additional benefits otherwise provided by the retirement system on account of such employment, including disability benefits, health care benefits, cost-of-living allowances, etc.

Fiscal Impact

According to the PERS actuary, Gabriel, Roeder, Smith & Company, H.B. 84 would have a small favorable financial effect on the actuarial condition of PERS, though enactment of the bill would have no immediate effect on either contribution rates or actuarial liabilities. The ORSC actuary, Milliman & Robertson, Inc., concurs with this actuarial cost statement.

ORSC Position

At its meeting of April 4, 2001 the Ohio Retirement Study Council voted to recommend that the 124th Ohio General Assembly approve H.B. 84 as limited to elected officials who retire from PERS and are reelected or appointed to the same office for the remainder of their term or the term immediately following, thereby restoring the prior reemployment restrictions that existed prior to S.B. 144 to this limited group of PERS retirees. The ORSC also voted to recommend that the 124th Ohio General Assembly approve the amendment included in the substitute version of the bill relative to the tax treatment under an alternative retirement plan for higher education employees.

Effective Date

July 31, 2001